

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.21510 of 1997

Date: 19.02.2007

Between:

N. Subhash Reddy, S/o Ram Reddy,

.... Petitioner

And

Member Secretary, A.P.S.E.B.,
Vidyutsoudha, Somajiguda,
Hyderabad and another

.... Respondents

ORDER:

The petitioner, a Revenue Cashier and a non-graduate, was promoted to the post of Upper Division Clerk (UDC) on 8.11.1996. The proceedings issued by the respondents dated 10.7.1997 reverting him to the post of Revenue Cashier/LDC is impugned in this writ petition.

The proceedings dated 10.7.1997 is a show cause notice calling upon the petitioner to explain why he should not be reverted. The said order refers to the order of the Supreme Court in C.A.No.180-181/84, dated 27.2.1996. In the impugned proceedings, the Superintending Engineer refers to the fact that, since the Supreme Court had not upheld B.P.Ms.No.664, dated 5.8.1981 by which relaxation was granted, the effect of which was to uphold the judgment of the High Court quashing the said

B.P.Ms.No.664, dated 5.8.1981, there cannot be any relaxation and consequential promotion of un-qualified candidates from 27.2.1996 onwards i.e. from the date of the judgment of the Supreme Court and that relaxation of qualifications, relating to the tests prescribed by the Board to give un-qualified candidates the benefit of promotion to higher categories, shall be deemed to be legally null and void.

Sri K. Vasudeva Reddy, learned counsel for the petitioner would place before this Court the order of the Supreme Court in C.A.Nos.180-181 of 1984 dated 27.2.1996, wherein it is observed that B.P.Ms.No.664, dated 5.8.1981 was under consideration for some time in the past, that under the said BPMS, it is proposed to grant exemption from passing the departmental tests to Lower Division Clerks, typists/Steno-typists and Upper Division Clerks, who have rendered long service in the same post, who are not covered by the provisions of B.P. cited, for promotion to next higher category. The Supreme Court referred to the fact that while the learned Single Judge had dismissed the writ petition, the Division Bench had reversed the findings of the learned Single Judge and quashed the relaxation granted to the appellants and also set aside the order in B.P.No.664, dated 5.8.1981. The Supreme Court referred to the Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulations (the Regulations), which confers powers on the Board to relax the regulation. The Supreme Court thereafter observed thus:

“.....We have heard learned counsel for the parties. It is not necessary for us to go into the correctness of the interpretation given by the Division Bench of the High Court. The relaxation was given to the appellants as back as 1981. By that time, the appellants had already put in more than 15 years of service. After further 15 years today, most of them would be hearing retirement.

We are of the view that taking away the relief granted by the Electricity Board to the appellants in the year 1981 would do more harm than good. We, therefore, in the facts and circumstances of this case uphold the relaxation, from passing the test, granted to the appellant by the Board in the year 1981. We make it clear that we are not upholding the order of the Board on the interpretation of the Rule but keeping in view the time lapse and also to obviate the injustice which is likely to be caused to the appellants in case the relaxation is withdrawn today.

We, therefore, set aside the judgment of the Division Bench of the High Court so far as the Relief part is concerned and upholding the order of the Board granting relaxation to the appellants from passing the test. The appeals are allowed to the above matter. No costs.

Without going into the correctness or otherwise, of the interpretation placed on the regulations by the Division Bench, the Supreme Court, in the facts and circumstances of the case, in fact, upheld the relaxation given from passing the test and insofar as the relief part was concerned, the order of Division Bench was set aside by the Supreme Court. *Prima facie*, the submission of Sri K. Vasudeva Reddy, learned counsel for the petitioner, that the impugned show cause notice dated 10.7.1997 reveals non-application of mind to the order of the Supreme Court, seems valid. The Supreme Court did not uphold the judgment of the Division Bench.

Sri K. Vasudeva Reddy, learned counsel for the petitioner, would submit that the order of the Supreme Court has been misconstrued by the Superintending Engineer in his memo dated 10.7.1997, and as such the memo is liable to be quashed.

The fact, however, remains that the impugned proceedings

dated 10.7.1997 is a show cause notice and this Court would, ordinarily, exercise its jurisdiction under Article 226 of the Constitution of India to interfere only where the show cause notice is issued by an authority not competent to do so or the notice issued is without jurisdiction. In all other matters, it is for the petitioner to submit his reply to the show cause notice and satisfy the competent authority as to why the show cause notice is required to be set aside.

In view of the interim order passed by this Court, the order of reversion has not been given effect to for the past more than a decade. Ends of justice would be met if the petitioner is permitted to file an additional reply to the show cause notice within a period of four weeks from the date of receipt of copy of this order and the respondents are directed to consider such additional reply and pass appropriate orders thereupon in accordance with law after assigning reasons in support of its conclusions, within a period of three months from the date of receipt of such additional reply. Needless to state that till final orders are passed by the competent authority, the interim order passed by this Court shall continue to remain in force.

Accordingly, the writ petition is disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 19th February 2007

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